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EXAMINER	
RAPILLO, KRISTINE K	
ART UNIT	**PAPER NUMBER**
3626	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/789,636	ROSSINNI ET AL.	
	Examiner	Art Unit	
	Kristine K. Rapillo	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2/27/2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 February 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/19/2004; 11/9/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1 – 26 are pending.

Claim 15 was cancelled in the amendment.

Drawings

1. **Figure 1** should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character **212 (Figure 2)** has been used to designate both Communication Network and Programmer; **220 (Figure 2)** has been used to designate both Data Input Device and Mobile Monitor; and, **228 (Figure 2)** has been used to designate both Server and Raw Medical Device Data. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters **220, 222, 224**, and **258 (Figure 2)** have been used to designate Data Input Device; reference characters **438 (Figure 4)** and **448 ([paragraphs [0095] and [0096])** for port A have been used to designate Decoded; reference characters **443 (Figure 4)** and **445 (paragraphs [0093] and [0097])** for port C have been used to designate IMD Type A Interpretation; reference characters **434 (Figure 4)** and **454 (paragraphs [0095] and [0096])** have been used to designate Decoded for port C; reference characters **605 (Figure 6a)** and **608 (paragraph [0106])** have been used to designate Receive Participant Information; reference characters **610 (Figure 6a)** and **611 (Figure 6b)** have both been used to designate Validate Fields; reference characters **616 (Figure 6b)** and **619 (paragraph [0116])** have both been used to designate Backup Measurements Taken?; reference characters **619 (paragraph [0116])** and **620 (Figure 6b)** have both been used to designate Enter Additional Data, and, reference characters **642 (paragraph [0123])** and **644 (Figure 6d)** have both been used to designate Enter Reimbursement Information.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **Figure 2 – 224**; **Figure 3 – 340**; **Figure 4 – 434**, **438**, and **443**; **Figure 6b – 616**; and, **Figure 8 – 835**.

5. The drawings are objected to because in **Figure 6b**, the specification (paragraph [0013]) states that reference number **614** notifies a physician of a validation error, then

physician can correct it at reference character **618.** However, based on the drawing of Figure 6b, reference number 614 flows to reference number 619 or 615.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **Figure 4 – 445**, **448**, and **454**; **Figure 6a – 608**, **611**, and **612**; **Figure 6b – 622**; **Figure 6d – 642**.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 16, 17, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 16, the applicant refers to a cancelled claim (claim 15), thus the applicant fails to distinctly claim what the method of distributing access tools is dependent upon. For examination purposes, the Examiner interprets the base or independent claim to be claim 11.

In regard to claim 17, the applicant refers to a cancelled claim (claim 15), thus the applicant fails to distinctly claim what the method where the first graphical representation is an electrocardiogram. For examination purposes, the Examiner interprets the base or independent claim to be claim 11.

In regard to claim 25, the applicant fails to distinctly claim what is his invention. The phrase "wherein the recipient is a physician of the patient" is unclear. For examination purposes, the Examiner has transposed the terms "physician" and "patient" so that the phrase reads "wherein the recipient is a patient of the physician".

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 1 - 14 and 16 - 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Norris et al. (U.S. Patent No. 6,669,631) in view of Mazar et al. (U.S. Patent No. 7,009,511).

In regard to claim 1, Mazar et al. teaches a system for delivering and gathering medical information, the system comprising: a server, wherein the server includes a processor and a computer readable medium (column 9, lines 1 – 2) wherein the computer readable medium includes instructions executable by the microprocessor to: identify a portion of the medical data set under review where any of the medical data disclosed can be used (column 10, lines 28 - 41); Identify a review group associated with the portion of the medical data set under review, wherein the review group includes at least one member where the review group includes a clinician (column 11, lines 28 – 33); Provide the portion of the of the medical data set under review to at least one member of the review group where the information is delivered to a caregiver (column 14, lines 26 - 30); and, receive an analysis of the portion of the medical data set under review from the at least one member of the review group where the analyzed data can be any type of data generated by a device such as an implanted medical device (column 4, lines 5 - 6).

Mazar et al. fails to teach a medical data set, wherein the medical data set includes at least a first data set derived from a first implantable medical device of a first implantable medical device type, and a second data set derived from a second implantable medical device from a second implantable medical device type.

Norris et al. teaches a medical data set, wherein the medical data set includes at least a first data set derived from a first implantable medical device of a first implantable medical device type, and a second data set derived from a second implantable medical device from a second implantable medical device type (column 7, lines 34 – 38 and Figure 1). Figure 1 in Norris et al. shows a picture of an IMD implanted into a patient's chest with a communication network to illustrate the transfer of data from the device to a computer system. Norris et al. does not expressly show a method of gathering data from IMD's implanted in multiple patients. However, this difference is only found in the non-functional descriptive material and is not functionally involved in the system. The gathering of data from IMD's implanted into a patient would be performed the same regardless of the data. Thus, the descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a medical data set, wherein the medical data set includes at least a first data set derived from a first implantable medical device of a first implantable medical device type, and a second data set derived from a second implantable medical device from a second implantable medical device type as taught by Norris et al. with the motivation of providing a system which communicates data to a medical information network which is able to deliver clinical tools to a caregiver to assist in improved patient care (column 5, lines 8 – 17).

In regard to claim 2, Mazar et al. teaches a system wherein the medical data set further includes at least one of a first physician provided objective data and a first physician provided subjective data associated with the first data set, and at least one of a second physician provided objective data and a second physician provided subjective data associated with the second data set (column 11, lines 26 – 34). Mazar et al. does not expressly show a second physician provided objective data and a second physician provided subjective data associated with the second data set.

However, these differences are only found in the non-function descriptive material and are not functionally involved in the system of providing objective and subjective data to a physician. The system of providing objective and subjective data to a physician would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a second physician subjective and objective medical data because the second physician does not functionally relate to the actual process of providing subjective and objective medical data (i.e. data can be provided to a first physician, therefore, data can be provided to a second physician) in the system claimed and because providing data to a second physician does not patentably distinguish the claimed invention.

In regard to claim 3, Mazar et al. teaches a system wherein the analysis is a medical diagnosis, and wherein the at least one member of the review group is selected from a group consisting of: a specialist versed in providing the medical diagnosis based at least in part on the portion of the medical data set under review, and a physician versed in providing the medical diagnosis based at least in part on the portion of the medical data set under review (column 13, lines 50 – 64). Mazar et al. discloses the term "caregivers" which encompasses doctors, nurses, and other health care staff. The Examiner interprets the term "caregivers" to include both specialists and general physicians.

In regard to claim 4, Mazar et al. teaches a system wherein the computer readable medium includes instructions to: compare at least a portion of the third data set with a corresponding portion of the first data set and a corresponding portion of the second data set, wherein it is determined that the first data set and the third data set are similar, where statistical analysis can be construed as a comparison of data and there is no functional difference in comparing the first set of data and the second set of data (column 9, lines 53 – 58) and communicate the medical diagnosis associated with the first data set to a provider of the third data set (column 11, lines 43 – 46 and column 14, lines 36 - 40).

Mazar et al. fails to teach a system wherein the computer readable medium includes instructions executable by the microprocessor to: receive a third data set derived from a third implantable medical device.

Norris et al. teaches a system wherein the computer readable medium includes instructions executable by the microprocessor to: receive a third data set derived from a third implantable medical device (column 7, lines 34 - 38 and Figure 1). Figure 1 in Norris et al. shows a picture of an a third IMD implanted into a patient's chest with a communication network to illustrate the transfer of data from the device to a computer system. Norris et al. does not expressly show a method of gathering data from IMD's implanted in multiple patients. However, this difference is only found in the non-functional descriptive material and is not functionally involved in the system. The gathering of data from IMD's implanted into a patient would be performed the same regardless of the data. Thus, the descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a system wherein the computer readable medium includes instructions executable by the microprocessor to: receive a third data set derived from a third implantable medical device as taught by Norris et al. with the motivation of providing a system which communicates data to a medical information

network which is able to deliver clinical tools to a caregiver to assist in improved patient care (column 5, lines 8 – 17).

In regard to claim 5, Mazar et al. teaches the system of claim 4, wherein the provider of the third data set is selected from a group consisting of: a patient associated with the third implantable medical device, and a physician overseeing a patient associated with the third implantable medical device (column 14, lines 26 – 30).

In regard to claim 6, Mazar et al. teaches a method of gathering and delivering medical data.

Mazar et al. fails to teach Norris et al. teaches a system wherein the first data set is converted to provide a first graphical representation, and wherein the second data set is converted to provide a second graphical representation.

Norris et al. teaches a system of claim 1, wherein the first data set is converted to provide a first graphical representation, and wherein the second data set is converted to provide a second graphical representation (column 11, lines 4 - 11).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a system wherein the first data set is converted to provide a first graphical representation, and wherein the second data set is converted to provide a second graphical representation as taught by Norris et al. with the motivation of enabling a health care provider the means to review data in a more efficient manner (column 10, line 67 through column 11, line 3).

In regard to claim 7, Mazar et al. teaches a method of gathering and delivering medical data.

Mazar et al. fails to teach a system wherein the computer readable medium includes instructions executable by the microprocessor to: distribute an access tool to each member of the review group, wherein the access tool is operable to display the first graphical representation and the second graphical representation.

Norris et al. teaches the system of claim 6, wherein the computer readable medium includes instructions executable by the microprocessor to: distribute an access tool to each member of the review group, wherein the access tool is operable to display the first graphical representation and the second graphical representation (column 8, lines 50 – 56).

The motivation for combining the teachings of Mazar et al. and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 8, Mazar et al. teaches a method of gathering and delivering medical data.

Mazar et al. fails to teach a method where the first graphical representation is an electrocardiogram.

Norris et al. teaches the method of claim 7, the first graphical representation is an electrocardiogram (column 11, lines 4 – 8).

The motivation for combining the teachings of Mazar et al. and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 9, Mazar et al. teaches a method wherein the review group includes at least a first specialist and a second specialist, wherein the first and second specialists are versed in providing medical diagnosis based at least in part on information included within the data set, and wherein the analysis includes a first medical diagnosis from the first specialist and a second diagnosis from the second specialist (column 13, lines 50 – 64 and column 14, lines 26 – 35). Mazar et al. does not expressly show a second specialist.

However, this difference is only found in the non-functional descriptive material and is not functionally involved in the method recited. The method of a specialist providing a medical diagnosis would be performed regardless of whether the diagnosis was provided by a first specialist or second specialist. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the medical diagnosis provided by a specialist could be performed by a first specialist or a second specialist because the first or second does not functionally relate to providing a medical diagnosis in the method

claimed and because the first or second specialist does not patentably distinguish itself from the claimed invention.

In regard to claim 10, Mazar et al. teaches a method to compare at least a portion of the third data set with a corresponding portion of the first data set and a corresponding portion of the second data set, wherein it is determined that the first data set and the third data set are similar (column 9, lines 53 – 58); and communicate the first medical diagnosis and the second medical diagnosis to a provider of the third data set (column 11, lines 43 – 46 and column 14, lines 36 - 40).

Mazar et al. fails to teach a method wherein the computer readable medium includes instructions executable by the microprocessor to: receive a third data set derived from a third implantable medical device.

Norris et al. teaches a method wherein the computer readable medium includes instructions executable by the microprocessor to: receive a third data set derived from a third implantable medical device (column 7, lines 34 – 38 and Figure 1).

The motivation for combining the teachings of Mazar et al. and Norris et al. are discussed in the rejection of claim 4, and incorporated herein.

In regard to claim 11, Mazar et al. teaches a method of identifying a review group associated with data set, wherein the review group includes one or more members (column 13, line 56 through column 14, line 2); receiving an analysis of the data set from the at least one member of the review group where the analysis of patient data is

provided to predict a patients well-being (column 11, lines 11 – 15) and associating the analysis with the data set (column 11, lines 28 – 46).

Mazar et al fails to teach a method for obtaining medical information feedback, the method comprising: receiving a data set originating from an implantable medical device, and communicating the data set to at least one member of the review group.

Norris et al. teaches a method for obtaining medical information feedback, the method comprising: receiving a data set originating from an implantable medical device (column 7, lines 34 – 38 and Figure 1), and communicating the data set to at least one member of the review group where the data is communication through a medical database (column 13, line 56 through column 14, line 2 and column 14, lines 16 – 20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method for obtaining medical information feedback, the method comprising: receiving a data set originating from an implantable medical device, identifying a review group associated with data set, wherein the review group includes one or more members; and, communicating the data set to at least one member of the review group as taught by Norris et al. with the motivation of utilizing a centralized medical information database which receives IMD generated data and can communicate this data to the appropriate parties via the use of a database (column 5, lines 18 – 21).

In regard to claim 12, Mazar et al. teaches a method wherein the analysis is a medical diagnosis, and wherein the at least one member of the review group is a

specialist versed in providing the medical diagnosis based at least in part on the data set (column 3, lines 26 – 29 and column 13, lines 50 – 64). Mazar et al. discloses the term "caregivers" which encompasses doctors, nurses, and other health care staff. The Examiner interprets the term "caregivers" to include specialists.

In regard to claim 13, Mazar et al. teaches a method comparing the second data set with the first data set wherein it is determined that the first data set and the second data set are similar (column 9, lines 53 - 58) and communicating the medical diagnosis associated with the first data set to a provider of the second data set (column 11, lines 43 – 46 and column 14, lines 36 – 40).

Mazar et al. fails to teach a method wherein the data set is a first data set, wherein the implantable medical device is a first implantable medical device, and wherein the method further comprises: receiving a second data set originating from a second implantable medical device.

Norris et al. teaches the method of claim 12, wherein the data set is a first data set, wherein the implantable medical device is a first implantable medical device, and wherein the method further comprises: receiving a second data set originating from a second implantable medical device (column 5, lines 8 – 17 and Figure 1). Norris et al. does not expressly show a method of receiving data from IMD's implanted in multiple patients. However, this difference is only found in the non-functional descriptive material and is not functionally involved in the system. The receiving of data from IMD's implanted into a patient would be performed the same regardless of the data. Thus, the

descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

The motivation for combining the teachings of Norris et al. and Mazar et al. is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 14, Mazar et al. teaches the method of claim 13, wherein the provider of the second data set is selected from a group consisting of: a patient associated with the second implantable medical device, and a physician overseeing a patient associated with the second implantable medical device (column 14, lines 26 – 30).

In regard to claim 16, Mazar et al. teaches a method for obtaining medical information feedback.

Mazar et al. fails to teach a method further comprising: distributing an access tool to each member of the review group, wherein the access tool is operable to display the first graphical representation and the second graphical representation.

Norris et al. teaches the method of claim 15, the method further comprising: distributing an access tool to each member of the review group, wherein the access tool is operable to display the first graphical representation and the second graphical representation (column 8, lines 50 – 56). For examination purposes, claim 11 was treated as the independent claim for which this claim refers

The motivation to combine the teachings of Mazar et al. and Norris et al. is discussed in the rejection of claim 7, and incorporated herein.

In regard to claim 17, Mazar et al. teaches a method for obtaining medical information feedback.

Mazar et al. fails to teach a method where the first graphical representation is an electrocardiogram.

Norris et al. teaches the method of claim 15, the first graphical representation is an electrocardiogram (column 11, lines 4 – 8). For examination purposes, claim 11 was treated as the independent claim for which this claim refers.

The motivation to combine the teachings of Mazar et al. and Norris et al. is discussed in the rejection of claim 8, and incorporated herein.

In regard to claim 18, Mazar et al. teaches the method of claim 11, wherein the data set is stripped of identification information prior to communicating the data set to the at least one member of the review group (column 12, lines 49 – 51). Mazar et al. discloses privacy restrictions for data, which the Examiner interprets as blinding the patient information from the data.

In regard to claim 19, Mazar et al. teaches a method wherein the data set is received from a source selected from a group consisting of: a programmer, a bedside monitor, and a mobile monitor (column 6, lines 1 – 4 and column 7, lines 57 – 62). The

Examiner interprets a bedside monitor to serve the same function as a remote monitor, and a PDA to be a mobile monitor.

In regard to claim 20, Mazar et al. teaches a method wherein the review group includes at least a first specialist and a second specialist, wherein the first and second specialists are versed in providing medical diagnosis based at least in part on information included within the data set, and wherein the analysis includes a first medical diagnosis from the first specialist and a second diagnosis from the second specialist (column 13, lines 50 – 64 and column 14, lines 26 – 35). Mazar et al. does not expressly show a second specialist.

However, this difference is only found in the non-functional descriptive material and is not functionally involved in the method recited. The method of a specialist providing a medical diagnosis would be performed regardless of whether the diagnosis was provided by a first specialist or second specialist. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the medical diagnosis provided by a specialist could be performed by a first specialist or a second specialist because the first or second does not functionally relate to providing a medical diagnosis in the method

claimed and because the first or second specialist does not patentably distinguish itself from the claimed invention.

In regard to claim 21, Mazar et al. teaches a method comparing the second data set with the first data set wherein it is determined that the first data set and the second data set are similar (column 9, lines 53 – 58) and communicating the first medical diagnosis and the second medical diagnosis to a provider of the second data set (column 11, lines 43 – 46 and column 14, lines 36 - 40).

Mazar et al. fails to teach a method wherein the data set is a first data set, wherein the implantable medical device is a first implantable medical device, and wherein the method further comprises: receiving a second data set originating from a second implantable medical device.

Norris et al. teaches the method of claim 20, wherein the data set is a first data set, wherein the implantable medical device is a first implantable medical device, and wherein the method further comprises: receiving a second data set originating from a second implantable medical device (column 7, lines 34 – 38 and Figure 1).

The motivation for combining the teachings of Norris et al. and Mazar et al. is discussed in the rejection of claim 10, and incorporated herein.

In regard to claim 22, Mazar et al. teaches a method augmenting the data set to create an augmented data set, wherein the augmented data set includes at least one of

a physician provided objective data and a physician provided subjective data (column 5, lines 17 – 22 and column 5, lines 37 – 49).

In regard to claim 23, Mazar et al. teaches a method wherein the analysis is a medical diagnosis based at least in part on the augmented data set (column 13, lines 50 – 64).

In regard to claim 24, Mazar et al. teaches a system wherein the computer readable medium includes instructions executable by the processor to: receive a request for medical data, wherein the request includes an indication of the implantable medical device (column 10, lines 28 - 39) and access the first data set and the second data set from the medical data database (column 14, lines 26 - 35).

Mazar et al. fails to teach a system for distributing medical data, the system comprising: a medical data database, wherein the medical data database includes a first data set originated from an implantable medical device and a second data set originated from the implantable medical device and server, wherein the server includes a processor and a computer readable medium, and communicate the first data set and the second data set to a recipient across a communication network.

Norris et al. teaches a system for distributing medical data, the system comprising: a medical data database, wherein the medical data database includes a first data set originated from an implantable medical device and a second data set originated from the implantable medical device (column 7, lines 34 – 38 and Figure 1)

and server, wherein the server includes a processor and a computer readable medium (column 7, lines 44 – 49 and column 8, lines 51 – 56), and communicate the first data set and the second data set to a recipient across a communication network (column 13, line 56 through column 14, line 2 and column 14, lines 16 - 20).

The motivation for combining the teachings of Mazar et al. and Norris et al. is discussed in the rejection of claim 4, and incorporation herein.

In regard to claim 25, Mazar et al. teaches the system of claim 24, wherein the implantable medical device is implanted in a patient, and wherein the recipient is a physician of the patient. For the purpose of examination, the Examiner has treated this claim as the recipient is a patient of the physician. Mazar et al. discloses a system in which data from the medical device is analyzed and information indicates a physician visit is required, thus illustrating the relationship of the IMD, patient and physician (column 16, lines 35 – 48).

In regard to claim 26, Mazar et al. teaches a method for distributing medical data.

Mazar et al. fails to teach a system wherein the first data set is converted to provide a first graphical representation, and wherein the second data set is converted to provide a second graphical representation.

Norris et al. teaches a system wherein the first data set is converted to provide a first graphical representation, and wherein the second data set is converted to provide a second graphical representation (column 11, lines 4 - 11).

The motivation for combining the teachings of Mazar et al. and Norris et al. are discussed in the rejection of claim 6, and incorporated herein.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Snell (U.S. Patent No. 6,263,245) discloses a system and method for obtaining data from an implantable medical device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine K. Rapillo whose telephone number is 571-270-3325. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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